

TRANSLATION

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

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| Applicant's or agent's file reference M/43253-PCT | FOR FURTHER ACTION | | See Form PCT/IPEA/416 |
| International application No. PCT/EP2004/009122 | International filing date (<i>day/month/year</i>) 13.08.2004 | Priority date (<i>day/month/year</i>) 14.08.2003 | |
| International Patent Classification (IPC) or national classification and IPC A01N37/52, A01N43/10, A01N43/56, A01N43/653 | | | |
| <p>Applicant BASF AKTIENGESELLSCHAFT</p> | | | |
| <p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of 6 sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p> <p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the report</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input checked="" type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p> | | | |

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| Date of submission of the demand | Date of completion of this report |
| Name and mailing address of the IPEA/EP | Authorized officer |
| Facsimile No. | Telephone No. |

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/EP2004/009122

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

This report is based on translations from the original language into the following language _____, which is the language of a translation furnished for the purposes of:

 - international search (Rule 12.3 and 23.1(b))
 - publication of the international application (Rule 12.4)
 - international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the **elements** of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

the international application as originally filed/furnished
 the description:
 pages 1-45 _____ as originally filed/furnished
 pages* _____ received by this Authority on _____
 pages* _____ received by this Authority on _____
 the claims:
 nos. 1-33 _____ as originally filed/furnished
 nos.* _____ as amended (together with any statement) under Article 19
 nos.* _____ received by this Authority on _____
 nos.* _____ received by this Authority on _____
 the drawings:
 sheets _____ as originally filed/furnished
 sheets* _____ received by this Authority on _____
 sheets* _____ received by this Authority on _____
 a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. The amendments have resulted in the cancellation of:

the description, pages _____
 the claims, nos. _____
 the drawings, sheets/figs _____
 the sequence listing (*specify*): _____
 any table(s) related to sequence listing (*specify*): _____
4. This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

the description, pages _____
 the claims, nos. _____
 the drawings, sheets/figs _____
 the sequence listing (*specify*): _____
 any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

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| International application No. | PCT/EP2004/009122 |
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| Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
|-----------|--|

1. Statement

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|-------------------------------|--------------------|-----|
| Novelty (N) | Claims <u>1–33</u> | YES |
| | Claims _____ | NO |
| Inventive step (IS) | Claims _____ | YES |
| | Claims <u>1–33</u> | NO |
| Industrial applicability (IA) | Claims <u>1–33</u> | YES |
| | Claims _____ | NO |

2. Citations and explanations (Rule 70.7)

1. The product as per claim 1 differs from the closest prior art (WO 99/14187 A1 (D1), in particular preparation IX) by the specific ratio by weight between the alkoxylated alcohol (b1) and the benzamidoxime derivative (a1): the oily dispersion IX of D1 contains 20 parts benzamidoxime for 8 parts of a fatty alcohol polyglycol ether which falls under the broadly defined formula (II) according to the present claim 5. The weight ratio of surfactant to benzamidoxime thus remains just below the claimed limit.

EP 1 077 028 A1 (D2) also discloses polyethylene glycol ether, *inter alia*, as possible surfactant for benzamidoxime derivatives (D2: paragraph 20), but without giving a specific example or indicating a quantitative ratio.

D1, D2 or the other international search report citations do not disclose a clear technical teaching on the use of an alkoxylated alcohol for improving the fungicidal effect of a benzamidoxime derivative of formula (I) (claim 31).

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PCT/EP2004/009122**Box No. V** **Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

The subject matter of claims 1-33 is thus novel (PCT Article 33(2)).

2. The possible use of alkoxylated alcohols as surfactants for benzamidoxime derivatives is known (D1, D2).

It is also known that these compounds can be advantageously used for improving leaf absorption and/or the efficacy of pesticides or fungicides: see, *inter alia*, JP 9 278 605 A (D3), WO 03/022048 A1 (D4: page 1, line 32 - page 2, line 18, in connection with the compounds in examples 1, 3, 5 and 6), WO 99/26472 A1 (D5: page 1, lines 25-27, and page 5, line 24 - page 7, line 9) and WO 02/15697 A2 (D6: page 1, lines 40-42; and page 3, line 16 - page 4, line 15).

Alkoxylated alcohols constitute preferred surfactants for pesticide formulations, also for toxicological reasons (US 4 317 940 (D7)).

The choice of these compounds for increasing the efficacy of benzamidoxime fungicides is thus obvious.

The amounts used can be chosen in wide ranges, and a ratio of alkoxylated alcohol to fungicide of more than 0.5 is quite within the conventional range (see D4: page 5, line 29; D5: page 8, lines 25-28; D6: formulations A and B). It is not possible to determine from the examples according to the invention whether the chosen range - which does not specially deviate from the known range (D1: composition IX) - actually contributes to special

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effects in comparison with the effects of the known composition. The weight ratio of alcohol to benzamidoxime thus appears to constitute an arbitrary, non-inventive selection.

Insofar as the alkoxylated alcohols, as defined in claims 6-23, for example, differ from the alkoxylated alcohols known from D3-D6, they constitute obvious alternatives to these compounds.

No clear synergistic effect of the claimed combinations with further fungicides (claims 26, 27) can be found in the examples.

A kit (claim 30) represents a conventional configuration of a fungicide-adjuvant combination (D6: page 6, lines 17-24).

The subject matter of claims 1-33 thus does not involve an inventive step (PCT Article 33(3)).

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Box No. VI Certain documents cited

1. Certain published documents (Rule 70.10)

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|-------------------------------|--------------------------------------|---------------------------------|---|
| Application No. Patent No. | Publication date (day/month/year) | Filing date (day/month/year) | Priority date (valid claim) (day/month/year) |
|-------------------------------|--------------------------------------|---------------------------------|---|

2. Non-written disclosures (Rule 70.9)

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| Kind of non-written disclosure | Date of non-written disclosure (day/month/year) | Date of written disclosure referring to non-written disclosure (day/month/year) |
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